

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Cox California Telcom,
LLC (U-5684-C) Requesting The
Commission Not Require Cox to Pay
Disputed Surcharge Amounts
Identified in Audit Report

Application 19-01-014
(Filed January 29, 2019)

**PROTEST OF THE
CONSUMER PROTECTION AND ENFORCMENT DIVISION
TO THE APPLICATION OF COX CALIFORNIA TELCOM, LLC
(PUBLIC)**

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I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Consumer Protection and Enforcement Division (CPED) hereby protests Application (A.) 19-01-014 (Application) of Cox California Telcom, LLC (Cox). CPED was directed to re-file this protest in accordance with the two email rulings of Administrative Law Judge Kline, dated March 21, 2019 and April 2, 2019. These rulings also instructed the Docket Office to accord the refiled protest to the original filing date of March 14, 2019. A.19-01-014 first appeared in the Commission's Daily Calendar on February 14, 2019. Thus, this protest is timely filed pursuant to Rule 2.6(a).

In this Application, Cox seeks to avoid paying surcharges, identified in a routine audit report, and associated penalties. The facts identified in the audit are mostly undisputed; however, Cox has made legal arguments asserting that Directory Listing Services should not have been included in the calculation of the applicable surcharges.

Communications Division (CD) staff, in consultation with their attorneys, disputed Cox's position, and referred the case to CPED in order to collect the unpaid surcharge remittances identified in the audit, and associated penalties for late payments. Therefore, CPED protests this Application and requests the Commission issue an Order to Show Cause and order Cox to show cause as to why it should not be required to pay the disputed surcharge amounts and associated penalties identified in the Audit Report.

II. BACKGROUND

Pursuant to California Public Utilities Code section 274.3, the Commission contracted with Crowe Howarth LLC (Crowe) to conduct routine audits of carriers' remittances of Public Purpose Program (PPP) Surcharges and User Fees. The audit for fiscal years 2012-2013 was completed in 2016, and an additional analysis for fiscal years 2013-2014 and 2014-2015 was completed in 2017. The audit reports found that Cox had in some cases over-remitted and in some cases under-remitted surcharges. Cox responded to these reports and requested revisions and corrections. In cases involving uncontested errors and inadvertent mistakes, Cox acted addressed the Commissions concerns and

promptly made required payments. Where Cox disagreed with the audit’s findings, Cox placed disputed funds in escrow while contesting the findings informally and in prior formal Commission proceedings.

Cox’s primary disagreement with the audit findings involves the legal question of whether Directory Listing Services qualify as Telecommunications services and are therefore subject to surcharges under General Order (GO) 153 and Decision D.96-10-066. While Cox also contests certain penalty assessment and interest calculations, most of the specific facts are not disputed. Cox sought to address its legal questions through extensive communication with CD staff, and through potentially related Commission proceedings that did not ultimately rule on the subject.¹

From March 2018 through the filing of this Application, Cox was in regular communication with CD staff and responded to CD’s data requests. CD submitted three demand letters – in April 2018, October 2018, and December 2018 – and Cox responded with factual and legal objections, and with requests or extensions of time to see if the Commission would address the issue in related proceedings. On February 6, 2019, CD issued a final demand letter and warned Cox that nonpayment would result in a referral to CPED’s Utilities Enforcement Branch (UEB) for collections. The deadline for Cox to comply with the demand letter was February 15, 2019. However, instead of complying, Cox filed the instant Application in advance of anticipated enforcement action after failing to identify another venue or process in which to assert its legal claims.

III. BASES OF PROTEST

A. Cox Violated GO 153 and D.96-10-066 by Failing to Remit Required Surcharges and Fees to the Commission

Decision (D.) 96-10-066 cites Section 254(f) of the federal Telecommunications Act for the state’s authority to collect universal service contributions: “Every telecommunications carrier that provides intrastate telecommunications services shall

¹ In Rulemaking 17-06-023, the Commission considered whether text messaging service is subject to PPP Surcharges and User Fees.

contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.”²

GO 153 provides that surcharges are based on: “‘Gross Revenues’ – All revenues billed by a telecommunications carrier to end users for the provision of Intrastate Telecommunications Services, excluding all federal, state, and local taxes and all accounts that have been found to be worthless and written off for income tax purposes or, if the telecommunications carrier is not required to file income tax returns, written off in accordance with generally accepted accounting principles.”³

Cox does not dispute that it is subject to GO 153, D.96-10-066, and related provisions relating to payment deadlines and penalties. Cox does dispute that Directory Listing Services count as Intrastate Telecommunications Services under state and federal laws and precedents, and the definitions of such services. This assertion, however, is contradicted by the Commission’s determination in D.94-09-065, which found that directory listings are a Category II service and subject to PPP surcharges.⁴

CD staff, in consultation with their attorneys, have assessed that directory listing services qualify as Intrastate Telecommunications Services and are subject to surcharges under current precedent and applicable law. Based on these considerations, Cox’s failures to remit surcharges during the periods under audit are apparent violations of D.96-10-066 and GO 153.

B. Cox Filed the Application in Lieu of Complying with the Demand Letters

As discussed above, CD submitted four demand letters to Cox for payment of the under-remitted surcharges.⁵ In the last demand letter, sent on February 6, 2019, Cox was warned that it would be referred to UEB for a possible enforcement action. However, rather than comply, Cox responded by filing this Application. Given the factual

² D.96-10-066, 1996 Cal. PUC LEXIS 1046 *276.

³ GO 153, § 2.28.

⁴ See D.94-09-065, 1994 Cal. PUC LEXIS 681 *116-117 & Order ¶.

⁵ Copies of the demand letters are provided as Attachment A of this Protest.

background leading to this Application, the Commission should issue an Order to Show Cause and order Cox to show cause as to why it should not be required to pay the disputed surcharge amounts and penalties identified in the Audit Report. Doing so will allow the enforcement action to be considered in the context of this Application.

IV. CONCLUSION

Cox failed to remit surcharges for directory listing services in violation of D.96-10-066 and GO 153 which provide for the payment of surcharges on revenue derived from Intrastate Telecommunications Services. Accordingly, CPED protests Cox's Application and instead respectfully requests that the Commission issue an Order to Show Cause and order Cox to show cause as to why it should not be required to pay the disputed surcharge amounts and penalties identified in the Audit Report.

Respectfully submitted,

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